

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting desert land entry application I-9363.

Affirmed.

1. Desert Land Entry: Generally -- Desert Land Entry: Applications -- Words and Phrases

"Resident Citizen." As used in sec. 2 of the Act of March 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the state at the time of entry, and does not refer to individuals who have established tax or voting residency or own land within a state but who are not actually residing therein.

APPEARANCES: Benjamin D. Christensen, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Benjamin D. Christensen appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated November 30, 1982, rejecting desert land entry application I-9363. BLM rejected appellant's application because it found that appellant no longer resided in Idaho, the site of the lands that he seeks to enter.

On March 31, 1975, Christensen filed desert land entry application I-9363 for 320 acres of land in secs. 27, 28, and 33, T. 7 S., R. 11 E., Boise meridian, Elmore County, Idaho. On this application, he stated that he was a bona fide resident of Idaho. His address was set forth as "c/o Joe Potucek, Route 2, Buhl, Idaho 83316." In January 1980, BLM completed an environmental impact statement on agricultural development in southwest Idaho. BLM's decision to determine where the first desert land entry applications would be considered was made in 1981.

In the decision under appeal, BLM stated that an applicant for a desert land entry in Idaho must be a bona fide resident of Idaho in order to qualify as an applicant or receive an entry under the Desert Land Act. BLM found that although Christensen was a resident of Idaho at the time he filed his

application, the fact that he no longer resided there disqualified him from receiving an entry in Idaho.

Appellant acknowledges in his statement of reasons on appeal that he is residing in Wells, Nevada, 60 miles south of the Idaho border. He notes, however, that he has purchased undeveloped land near Glenns Ferry, Idaho, and that he has secured a water right and road permit for this land. Glenns Ferry is the town in which appellant was born and raised. He anticipates farming his private land in 1983 and moving back to Idaho.

Appellant writes that he hopes to be a bona fide resident of Idaho by the time applicants are interviewed for desert land entries in the area he seeks. Overfilings presently exist, appellant states, between Mountain View Irrigation, of which appellant is a stockholder, and Little Pilgrim. Appellant declares his intention to be living in Glenns Ferry by the time BLM makes its decision.

[1] The purpose of the statutes governing desert land entries is to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable. 43 CFR 2520.0-1; Circular 474, 45 L.D. 345 (1916). As originally set forth in the Act of March 3, 1877, the only requirement as to an applicant's citizenship was the statement that "it shall be lawful for any citizen of the United States, or any person of requisite age 'who may be entitled to become a citizen, and who has filed his declaration to become such'" to file a declaration that he intends to reclaim a tract of desert land. 19 Stat. 377. In the Act of March 3, 1891, however, there appeared the further requirement that "no person shall be entitled to make entry of desert lands except he be a resident citizen of the State or Territory in which the land sought to be entered is located." (Emphasis supplied.) 26 Stat. 1096. The Act of January 6, 1921, 41 Stat. 1086, provided for an exception to this requirement for lands in the State of Nevada for which desert land entry is sought. Statutes providing for desert land entries have been codified at 43 U.S.C. §§ 321-339 (1976).

In instructions prepared by Secretary Noble, dated June 22, 1892, the phrase "resident citizen of the State or Territory in which the land sought to be entered is located" was construed to embrace "all persons living in said State and entitled to protection in the exercise of civil rights without regard to their political rights." 14 L.D. 677, 680 (1892). In Sandy C. Baicy, 46 IBLA 140 (1980), this Board applied these instructions in holding that an application by a person living in Washington was properly rejected for lands to be entered in Idaho. In that case, appellant Baicy resided in Washington because of economic factors, inter alia, but paid property and income taxes to the State of Idaho. In addition, Baicy was a registered voter in Idaho and sent her husband's son to school there. See also Wallace S. Bingham, 21 IBLA 266, 82 I.D. 377 (1975), holding that a future-oriented intention to reside in the State is insufficient.

Financial considerations caused appellant Christensen to move to Nevada. As of December 1982, he was teaching school in Wells, Nevada. As in Baicy,

appellant Christensen did not live in the state where the lands he sought to enter were located. Although Christensen apparently lived in Idaho at the time of filing his application, he was not living there when BLM adjudicated his application for entry. BLM properly rejected application I 9363 because appellant was not entitled to enter lands in Idaho.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Edward W. Stuebing
Administrative Judge

